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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**
SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

**DECLARATION OF
BERNARD J. GARBUTT III**

BERNARD J. GARBUTT III, an attorney duly admitted to practice before this Court, declares under penalty of perjury as follows:

1. I am a partner with the law firm of Morgan, Lewis & Bockius LLP, attorneys for Customer-Claimant, the Kostin Co. I submit this declaration in opposition to the Trustee's "Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages," dated October 12, 2012, in the above-captioned action. (Docket Entry ("D.E."), Nos. 5038 - 5041). I base this affidavit upon my own personal knowledge, all prior papers and proceedings had herein, and my review of the file maintained by my firm in this action.¹

¹ Capitalized terms used herein shall have the meanings assigned to them in the "Memorandum Of Law Of Customer-Claimant The Kostin Co. In Opposition To The Trustee's Motion For An Order Affirming Trustee's Calculations Of Net Equity And Denying Time-Based Damages," dated December 3, 2012.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Complaint, dated November 12, 2010, in Picard v. Kostin Company, et al., Adv. Pro. No. 10-4950 (BRL) (Bankr. S.D.N.Y.) (D.E. No. 1).

3. Attached hereto as Exhibit "B" is a true and correct copy of the customer claim that the Kostin Co. submitted to the Trustee (the "Customer Claim"). The original addendum to the Customer Claim has been omitted, but is available upon request.

4. Attached hereto as Exhibit "C" is a true and correct copy of the "Notice of Trustee's Determination of Claim," dated October 12, 2010, in response to the Kostin Co.'s Customer Claim.

5. Attached hereto as Exhibit "D" is a true and correct copy of the Kostin Co.'s "Objection to Trustee's Determination of Claim," dated November 11, 2010 (the "Objection"). The exhibits to the original Objection have been omitted, but are available upon request. This document and the exhibits are also available on docket 08-01789, D.E. 3151.

6. Attached hereto as Exhibit "E" is a true and correct copy of the final account statement for the Kostin Co. Account at BLMIS, dated November 30, 2008.

7. Attached hereto as Exhibit "F" is a true and correct copy of a monthly account statement, for the month ended December 31, 1989, for the Kostin Co. Account at BLMIS (the "12/31/89 Stmt.").

8. Attached hereto as Exhibit "G" are true and correct copies of the trade confirmations sent by BLMIS to the Kostin Co. reflecting the trades for the securities listed on the 12/31/89 Stmt.

9. Attached hereto as Exhibit "H" are true and correct copies of the monthly account statements for the appropriate months, sent by BLMIS to the Kostin Co., reflecting the trades for the securities listed on the 12/31/89 Stmt.

10. Attached hereto as Exhibit "I" is a true and correct copy of the BLMIS document sent to the Kostin Co. entitled "Report For The Period From 1/01/89 To 12/31/89."

11. Attached hereto as Exhibit "J" is a true and correct copy of the transcript of Bernard Madoff's Plea Allocution, on March 12, 2009, in United States v. Madoff, Case No. 09-cr-00213 (S.D.N.Y.) (D.E. No. 57).

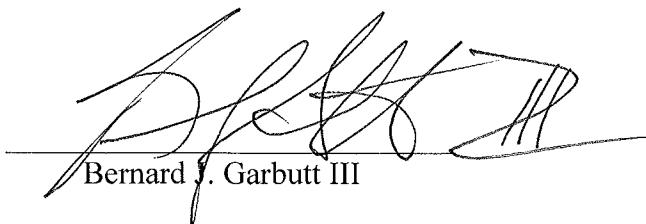
12. Attached hereto as Exhibit "K" is a true and correct copy of an article entitled "Bernie Madoff emails, claiming Picower and Shapiro portfolios were legitimate, to appear in 'Forbes' article," posted March 21, 2012 to www.palmbeachdailynews.com.

13. Attached hereto as Exhibit "L" is a true and correct copy of notes from a June 17, 2009 interview of Bernard Madoff by SEC Inspector General H. David Kotz, which can also be found at <http://www.sec.gov/news/studies/2009/oig-509/exhibit-0104.pdf>.

14. Attached hereto as Exhibit "M" is a true and correct copy of the transcript of Frank DiPascali's Plea Allocution, on August 11, 2009, in United States v. DiPascali, Case No. 09-cr-00764 (S.D.N.Y.) (D.E. No. 12).

15. Attached hereto as Exhibit "N" is a true and correct copy of the docket sheet for Adv. Pro. No. 10-04950, as of December 3, 2012.

Dated: New York, New York
December 3, 2012



Bernard J. Garbutt III